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AUG 22 2011

Attorney Docket No.: 20208.0002U1

Patent No.: 6,302,845

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re

WILLIAM TAO SHI et al.

Application No. 09/272,764

Filing Date: March 19, 1999

For: METHOD AND SYSTEM FOR  
PRESSURE ESTIMATION USING  
SUBHARMONIC SIGNALS FROM  
MICROBUBBLE-BASED  
ULTRASOUND CONTRAST AGENTS

Art Unit: 3737

Examiner: Jaworski, Francis J.

Confirmation No. 6065

**PETITION FOR RECONSIDERATION UNDER 37 C.F.R. § 1.378(b)**

Mail Stop PETITIONS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Ballard Spahr LLP  
Customer Number 23859

August 22, 2011

Sir:

Patentees are in receipt of a dismissal of Patentee's Petition to Accept Unavoidably Delayed Payment of a Maintenance Fee under 37 C.F.R. § 1.378(b), mailed June 21, 2011 (the "Dismissal"). The Dismissal states that the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 C.F.R. § 1.378(b). In particular, the Dismissal states that Patentees have not shown that: 1) the error of the former Thomas Jefferson University employee was the cause of the delay at issue; 2) there was a business routine in place that could reasonably be relied upon; and 3) the employee was sufficiently trained and experienced such that reliance on that employee represented the exercise of due care. The Dismissal further states that a statement is required from all persons with direct knowledge of the cause of unavoidable delay.

Atlanta #1215003 v1

Attorney Docket No.: 20208.0002U1

Patent No.: 6,302,845

In response, Patentees attach hereto an affidavit of Pei-Chun Tsai, Senior Contract Specialist at the Thomas Jefferson University Office of Technology Transfer & Business Development (the "OTT"), detailing both the successfully relied upon business practices in place to ensure the timely payment of maintenance fees and the training programs in place to ensure that OTT employees have sufficient experience such that they can be relied on to direct timely payment of maintenance fees. In support of Pei-Chun Tsai's affidavit, Patentee attaches Exhibits A and B, which are copies of emails sent by former OTT employee Eric Hsu to OTT's outside counsel in 2004, instructing outside counsel to pay maintenance fees for other OTT patents, along with proof from the United States Patent and Trademark Office's Patent Maintenance Fee webpage that the fees were paid as instructed. The successful payment of the maintenance fees shown in the Exhibits provides proof that it was reasonable for the OTT to rely upon the business routines employed at the time to ensure the timely payment of all maintenance fees.

Additionally, while the Dismissal states that a statement is required from all persons with direct knowledge of the cause of unavoidable delay in paying the maintenance fee, two of the individuals with such direct knowledge, namely Thomas Jefferson University's former IP Counsel Mr. Clifford Kent Weber and OTT receptionist Eric Hsu, are no longer Thomas Jefferson University employees. Patentees have tried, but have been unable to contact either of the former employees. To satisfy the Office of Petition's request for a statement from all persons with direct knowledge of the cause of unavoidable delay, Patentees previously submitted the affidavit of Dr. Steven McKenzie. Additionally, attached hereto is an affidavit of Lisa Lau, Senior Technology Licensing Associate at the Thomas Jefferson University Office of Technology Transfer & Business Development. Ms. Lau worked closely with Eric Hsu during the relevant time period, and thus has direct knowledge of the unavoidable delay, in addition to

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Dr. McKenzie. Ms. Lau's affidavit details that it was indeed the error of former OTT employees Mr. Weber and Mr. Hsu that caused the unavoidable delay at issue.

A credit card payment in the amount of \$400.00, representing the petition fee under 37 C.F.R. § 1.17(f) is enclosed. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.


Respectfully submitted,  
Ballard Spahr LLP

  
Charley F. Brown  
Registration No. 52,658

Ballard Spahr LLP  
Customer No. 23859  
(678) 420-9300 (phone)  
(678) 420-9301 (fax)

**CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. § 1.8**

I hereby certify that this correspondence, including any items indicated as attached or included, is being transmitted via facsimile transmission to: Office of Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, at 571-273-8300 on the date indicated below.

  
Charley F. Brown8/22/11  
Date

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Attorney Docket No.: 20208.0002U1  
Patent No.: 6,302,845

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re	)	
	)	
WILLIAM TAO SHI et al.	)	Art Unit: 3737
	)	
Application No. 09/272,764	)	Examiner: Jaworski, Francis J.
	)	
Filing Date: March 19, 1999	)	Confirmation No. 6065
	)	
For: METHOD AND SYSTEM FOR	)	
PRESSURE ESTIMATION USING	)	
SUBHARMONIC SIGNALS FROM	)	
MICROBUBBLE-BASED	)	
ULTRASOUND CONTRAST AGENTS	)	

**AFFIDAVIT OF LISA LAU**

I, LISA LAU, Senior Technology Licensing Associate at the Thomas Jefferson University Office of Technology Transfer & Business Development (the "OTT"), declare as follows:

1. I make the following statements, as a person with direct knowledge of the cause of unavoidable delay in this case, to describe both the employee in charge of ensuring the maintenance fee was timely paid and the specific situation that resulting in the failure to pay the maintenance fee at issue in this case, as a showing that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure timely payment.

- a. I have been an employee at the OTT since October 1, 2001.
- b. At the OTT, I have worked with the former OTT employee Eric Hsu who coordinated the communication between OTT and the engaged law firms.
- c. In coordinating the communication between OTT and the engaged law firms, Eric Hsu directed outside counsel to timely pay all maintenance fees.
- d. As an OTT employee, I was provided with extensive training on both the management of patent due dates and the importance of directing the timely payment of maintenance fees by Executive Director of the OTT. I also have attended conferences held by the Association of University Technology Managers.

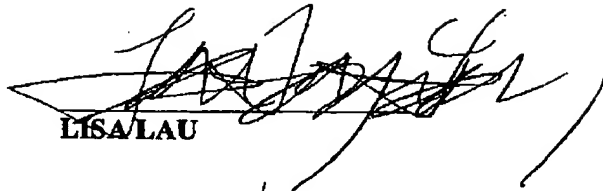
Atlanta #1215327 v1

Attorney Docket No.: 20208.0002U1  
Patent No.: 6,302,845

- e. In the case of the '845 Patent, Mr. Weber, an employee of Thomas Jefferson University in its IP Counsel Group of the Office of University Counsel, was responsible for payment of maintenance fees for the '845 Patent.
- f. Following Mr. Weber's termination by Thomas Jefferson University in 2003, there are no records indicating that he transferred responsibility for payment of maintenance fees for the '845 Patent to outside counsel.
- g. The first maintenance fee for the '845 Patent came due on April 16, 2005; however, OTT was not aware of this due date because of Mr. Weber's failure to notify OTT or outside counsel.
- h. Because of Mr. Weber's failure, OTT was not able to institute the system it has relied on since July 1, 2003, whereby the OTT has engaged outside counsel to manage all patent prosecution related matters, including the payment of maintenance fees.
- i. The first time OTT became aware of the failure to pay the maintenance fee for the '845 Patent was when it received the Notice of Expiration from the USPTO on December 22, 2005. At that time, the Notice was entered into the OTT's record keeping database by the former OTT employee Eric Hsu. Shortly thereafter, however, Eric Hsu resigned from employment and thus the Notice of Expiration was never forwarded to outside counsel, as per the system for handling patent cases in place at the time.
- j. I was working closely with Eric Hsu at the time he received the Notice of Expiration for the '845 Patent and entered it into the OTT database.
- k. Because Eric Hsu had been successfully handling the docket for a number of years, I trusted that he forwarded the Notice of Expiration of the '845 Patent to outside counsel for timely handling of the matter.
- l. To my knowledge, the '845 Patent is the only case handled by Eric Hsu and the OTT in which there has been a failure of this system, and thus a failure to pay maintenance fees.

2. LISA LAU further declares that all statements made herein of his/her own knowledge are true and that all statements made upon information and belief are believed to be true.

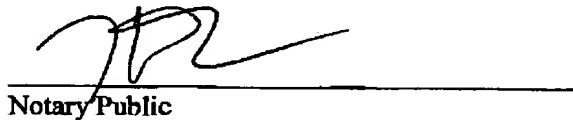
Attorney Docket No.: 20208.0002U1  
Patent No.: 6,302,845

  
LISA LAU

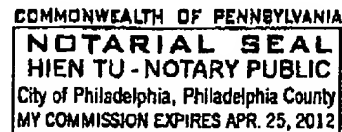
8/22/2011  
DATE

State of Pennsylvania  
County of Philadelphia

On this 22<sup>nd</sup> day of August, 2011, before me, a Notary Public, came LISA LAU, to me known and known to be the individual described in and who executed the foregoing affidavit, and he/she duly acknowledged the same to be his/her free act and deed.

  
Notary Public

My Commission Expires: Apr. 25, 2012



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In re	)	
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	)	
Application No. 09/272,764	)	Examiner: Jaworski, Francis J.
	)	
Filing Date: March 19, 1999	)	Confirmation No. 6065
	)	
For: METHOD AND SYSTEM FOR	)	
PRESSURE ESTIMATION USING	)	
SUBHARMONIC SIGNALS FROM	)	
MICROBUBBLE-BASED	)	
ULTRASOUND CONTRAST AGENTS	)	

**AFFIDAVIT OF PEI-CHUN TSAI**

I, **PEI-CHUN TSAI**, Senior Contract Specialist at the Thomas Jefferson University Office of Technology Transfer & Business Development (the "OTT"), declare as follows:

1. I make the following statements to describe both the employee training programs that were in place and the reliable business routine used to ensure that the maintenance fee was timely paid, as a showing that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure timely payment.

- a. Since July 1, 2003, the OTT has engaged outside counsel to manage all patent prosecution related matters, including the payment of maintenance fees.
- b. Because outside counsel handles all patent prosecution related matters for the OTT, OTT transferred all available patent files to outside counsel.
- c. A full time person was also put in place to coordinate the communication between OTT and the engaged law firms.
- d. One of the responsibilities of that full time position is to direct outside counsel to timely pay all maintenance fees.
- e. New OTT employees are routinely provided extensive training on both the management of patent due dates and the importance of directing the timely payment of maintenance fees by a Senior Licensing Associate at OTT. In addition, new OTT employees also routinely attend conferences held by the Association of University Technology Managers.

Atlanta #1215136 v1

Attorney Docket No.: 20208.0002U1  
Patent No.: 6,302,845

- f. Once outside counsel receives the patent files, it is their responsibility to track all due dates and timely pay all maintenance fees.
- g. To date, outside counsel has successfully tracked and paid all maintenance fees due in other OTT cases in a timely fashion.
- h. In practice, the OTT's system for handling its patent cases works as follows: (1) in the case of patents and patent applications initiated and filed before July 1, 2003, by Thomas Jefferson University Office of University Counsel, if, and when, the OTT receives a communication directly from the USPTO that communication is entered into the OTT's database. The database does not generate reminders of pending due dates, but rather serves as a storehouse of records. Once entered into the database, the OTT forwards the communication to outside counsel, who then takes over the responsibility of docketing that communication and keeping track of all pending due dates. (2) in the case of patents and patent applications initiated and filed after July 1, 2003, for which the OTT has engaged outside counsel, outside counsel receives communications from the USPTO and has the responsibility of docketing that communication and keeping track of all pending due dates. Outside counsel forwards that communication to the OTT and the OTT enters the communication into the OTT's database for record-keeping purposes.
- i. In the case of the '845 Patent, once the OTT received the Notice of Expiration from the USPTO on December 22, 2005, it was entered into the OTT's record keeping database by Eric Hsu, the receptionist. Shortly thereafter, however, the Mr. Hsu resigned from employment and thus the Notice of Expiration was never forwarded to outside counsel, as per the system for handling patent cases in place at the time.
- j. Utilizing the system which the OTT has relied on since 2003, case files and communications from the USPTO have been successfully either (1) received by the OTT and forwarded to outside counsel, and outside counsel has, in turn, successfully tracked and paid the maintenance fees in all other OTT cases or (2) received by outside counsel, who has successfully tracked and reminded the OTT of all pending due dates and has also timely paid the maintenance fees in all other OTT cases.
- k. Moreover, utilizing this system, the OTT currently maintains, or directs outside counsel to maintain, 166 issued United States patents. The '845 Patent is the only case handled by the OTT in which there has been a failure of this system, and thus a failure to pay maintenance fees.
- l. Therefore, there was no reason for the OTT to believe the system would not work in the case of the '845 Patent.



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- m. As examples of the successful operation of OTT's system, attached hereto as Exhibits A and B are true and correct copies of emails sent by Mr. Hsu to OTT's outside counsel in 2004, instructing outside counsel to pay maintenance fees for other OTT patents, along with proof from the United States Patent and Trademark Office's Patent Maintenance Fee webpage that the fees were paid as instructed.


2. PEI-CHUN TSAI further declares that all statements made herein of his/her own knowledge are true and that all statements made upon information and belief are believed to be true.

  
\_\_\_\_\_  
PEI-CHUN TSAI

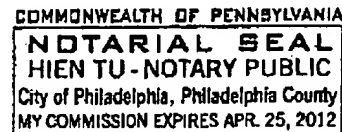
8/22/11  
\_\_\_\_\_  
DATE

State of Pennsylvania  
County of Philadelphia

On this 22nd day of August, 2011, before me, a Notary Public, came PEI-CHUN TSAI, to me known and known to be the individual described in and who executed the foregoing affidavit, and he/she duly acknowledged the same to be his/her free act and deed.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: April 25, 2012



# EXHIBIT A

**Grier, Jason P. (Atlanta)**

---

**From:** Kai-Wei Hsu [kai-wei.hsu@jefferson.edu]  
**Sent:** Monday, February 09, 2004 10:57 AM  
**To:** Daniel.Monaco@dbr.com  
**Cc:** Lisa Lau; Kelly Coggins; Katherine Chou  
**Subject:** US Patent No. 5,565,350 - 2004 Second Quarter US Maintenance Fee

Dear Dan,

We received your letter dated January 29, 2004 regarding 2004 Second Quarter US Maintenance Fee for US Patent No. 5,565,350. Please pay the maintenance fee to keep the patent in force. Thank you.

Best,

Eric

Eric Hsu  
Licensing Assistant  
Office of Techonlogy Transfer  
Thomas Jefferson University  
1020 Locust Street, Suite M34  
Philadelphia, PA 19107  
Phone 215-503-4961  
Fax 215-923-5835

8/22/2011

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**United States  
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Patent Bibliographic Data				08/22/2011 02:27 PM	
Patent Number:	5565350		Application Number:	08353657	
Issue Date:	10/15/1996		Filing Date:	12/09/1994	
Title:	COMPOUNDS AND METHODS FOR SITE DIRECTED MUTATIONS IN EUKARYOTIC CELLS				
Status:	4th, 8th and 12th year fees paid			Entity:	Small
Window Opens:	N/A	Surcharge Date:	N/A	Expiration:	N/A
Fee Amt Due:	Window not open	Surchg Amt Due:	Window not open	Total Amt Due:	Window not open
Fee Code:					
Surcharge Fee Code:					
Most recent events (up to 7):	10/06/2008 11.5 yr surcharge- late pmt w/in 6 mo, Small Entity. 10/06/2008 Payment of Maintenance Fee, 12th Yr, Small Entity. 04/21/2008 Maintenance Fee Reminder Mailed. 03/24/2004 Pat Holder Claims Small Entity Status 02/26/2004 Payment of Maintenance Fee, 8th Yr, Small Entity. 01/18/2000 Pat Hldr no Longer Claims Small Ent Stat as Nonprofit Org.. 01/14/2000 Payment of Maintenance Fee, 4th Year, Large Entity. --- End of Maintenance History ---				
Address for fee purposes:	PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN VA 22102				
<input type="button" value="Run Another Query"/>					

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# EXHIBIT B

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**Grier, Jason P. (Atlanta)**

---

**From:** Kai-Wei Hsu [kai-wei.hsu@jefferson.edu]  
**Sent:** Tuesday, February 10, 2004 9:14 AM  
**To:** Marks, Donna  
**Cc:** Lisa Lau; Kelly Coggins; Katherine Chou; Anthony Rowan; rpanitch@akingump.com  
**Subject:** Re: Patent Taxes - Second Quarter 2004 (209855.5005)

Dear Donna,

We received your reminder regarding Patent Taxes - Second Quarter 2004 (Your File: 209855.5005) originally dated December 18, 2003. Please pay the fees for US Patent No. 6,127,387 (\$771.00; Docket-No. PH-209855.0074) and EPO Application No. 99953353.2 (\$1109.66; Docket-No. PH-209855.0117). Please DO NOT pay tax for the Canadian Application No.2330208 (Docket-No. PH-209855.0118). Thank you.

Best,  
Eric

----- Original Message -----

From: "Marks, Donna" <dmarks@AKINGUMP.com>  
To: <kai-wei.hsu@jefferson.edu>  
Cc: "rlp" <rpanitch@jefferson.edu>  
Sent: Tuesday, January 27, 2004 4:44 PM  
Subject: FW: Patent Taxes - Second Quarter 2004 (209855.5005)

Dear Mr. Hsu:

This has reference to your e-mail to Ron Panitch.

I'm sorry that you did not receive our original letter. You may waive the \$50 surcharge as long as we receive your instructions prior to February 13, 2004. Our computer annuity service will charge us \$50.00 per property for any taxes paid after that date. Please let us have your instructions as soon as possible.

Thank you.

Donna C. Marks  
Legal Assistant  
Akin Gump Strauss Hauer & Feld LLP  
(215) 965-1383

-----Original Message-----

From: Kai-Wei Hsu [mailto:kai-wei.hsu@jefferson.edu]

8/22/2011

Sent: Tuesday, January 27, 2004 3:12 PM  
To: Panitch, Ronald  
Cc: Lisa Lau; Kelly Coggins; Katherine Chou  
Subject: Patent Taxes - Second Quarter 2004 (209855.5005)

Dear Mr. Panitch,

On January 23, 2004, we received your reminder letter concerning Patent Taxes for the Second Quarter 2004 originally dated December 18, 2003. You asked for instructions by January 16, 2004. However, I checked our records and did not find the original letter you sent us. We should not be responsible for the \$50 / per property surcharge since we did not receive the original letter and we did not receive your reminder until after the deadline. In addition, the reminder letter was dated after January 16, 2004.

Please feel free to contact us if you have any question. Thank you.

Best,

Eric

Eric Hsu  
Licensing Assistant  
Office of Technology Transfer  
Thomas Jefferson University  
1020 Locust Street, Suite M34  
Philadelphia, PA 19107  
Phone 215-503-4961  
Fax 215-923-5835

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Patent Bibliographic Data				08/22/2011 02:30 PM	
Patent Number:	6127387		Application Number:	08987086	
Issue Date:	10/03/2000		Filing Date:	12/09/1997	
Title:	USE OF CD4-BINDING SMALL MOLECULES TO INHIBIT IMMUNE RESPONSES				
Status:	12th year fee window opens: 10/03/2011			Entity:	Small
Window Opens:	10/03/2011	Surcharge Date:	04/04/2012	Expiration:	N/A
Fee Amt Due:	Window not open	Surchg Amt Due:	Window not open	Total Amt Due:	Window not open
Fee Code:	2553	MAINTENANCE FEE DUE AT 11.5 YEARS			
Surcharge Fee Code:					
Most recent events (up to 7):	04/16/2008 Payor Number Assigned. 04/03/2008 Payment of Maintenance Fee, 8th Yr, Small Entity. 02/26/2004 Payment of Maintenance Fee, 4th Yr, Small Entity. --- End of Maintenance History ---				
Address for fee purposes:	DRINKER BIDDLE & REATH ATTN: INTELLECTUAL PROPERTY GROUP ONE LOGAN SQUARE, SUITE 2000 PHILADELPHIA PA 19103-6996				
<input type="button" value="Run Another Query"/>					

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